

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JARRET ACEVEDO,

Plaintiff,

-against-

MEMORANDUM & ORDER
14-CV-0253(JS) (AKT)

COOL POWER, LLC, DUKE SCHIDMER,
and PETER TAORMINA,

Defendants.

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APPEARANCES

For Plaintiff: Albert Adam Breud II, Esq.
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For Defendants: Jeffrey S. Ettenger, Esq.
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Woodbury, NY 11797

SEYBERT, District Judge:

Pending before the Court is (1) Plaintiff's motion for a default judgment (Docket Entry 17); and (2) Magistrate A. Kathleen Tomlinson's Report and Recommendation ("R&R"), recommending that this Court deny Plaintiff's motion and vacate the certificates of default entered against defendants (Docket Entry 29.) For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

Plaintiff Jarret Acevedo ("Plaintiff") commenced this action on January 13, 2014 against defendant Cool Power, LLC ("Cool Power") and defendants Duke Schmider and Peter (the "Individual Defendants" and together with Cool Power, "Defendants"). Plaintiff claims that Defendants failed to pay him overtime in violation of the Fair Labor Standards Act and the New York Labor Law. (See Compl. ¶¶ 94-96, 102-105.) In February 2014, Plaintiff filed affidavits of service affirming that the Summons and Complaint was properly served upon Cool Power and the Individual Defendants. (Docket Entries 6-9.) Defendants did not answer or otherwise respond to the Complaint, and Plaintiff requested that certificates of default be entered against them on June 5, 2014. (Docket Entries 11-13.) On June 9, 2014, the Clerk of the Court issued certificates of default against Cool Power and the Individual Defendants. (Docket Entry 14.)

On June 30, 2014, Plaintiff moved filed a motion requesting entry of a default judgment. (Docket Entry 17.) On July 2, 2014, the undersigned referred Defendant's motion to Magistrate Judge A. Kathleen Tomlinson to issue a Report and Recommendation on whether the motion should be granted. (Docket Entry 19.) On February 13, 2015, Judge Tomlinson issued her R&R recommending that the Court deny Plaintiff's motion for a default judgment and vacate the certificates of default entered against Defendants. (Docket Entry 29.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Tomlinson's R&R (Docket Entry 29) is ADOPTED in its entirety. Plaintiff's motion for a default judgment (Docket Entry 17) is DENIED and the Clerk of the Court is directed to VACATE the certificates of default (Docket Entry 14) entered against Defendants on June 9, 2014.

SO ORDERED.

/s JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 9, 2015
Central Islip, New York